

ORDINANCE NO. 90 - 22

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AMENDING ORDINANCE NO. 89-35; PALM BEACH COUNTY CONCURRENCY EXEMPTION ORDINANCE AMENDING SECTION V - DEFINITIONS BY DELETING UNILATERAL STIPULATION; BY AMENDING SECTION VII - PROCEDURE: TO CLARIFY AND AMEND TIME FRAMES; PROVIDING FOR REVOCATION OF A DETERMINATION; TO PERMIT THE PLANNING DIRECTOR TO PRESENT THE STIPULATION TO THE HEARING OFFICER FOR SIGNATURE BY: BY AMENDING SECTION VIII D - CATEGORIES OF CONCURRENCY EXEMPTION DETERMINATIONS; BY AMENDING SECTION IX - CRITERIA IN DETERMINING IF AN APPROVAL REMAINS VALID; BY AMENDING SECTION XI - REVOCATION OF CONCURRENCY EXEMPTION DETERMINATION; ADDING A PROVISION FOR AN EXPEDITED HEARING IF AN EXEMPTION IS REVOKED DUE TO WILFULLY INCORRECT INFORMATION; BY AMENDING SECTION XIII - SPECIAL CRITERIA FOR WATER CONTROL DISTRICTS TO PROVIDE FOR GRANTING AN EXEMPTION TO GEOGRAPHICALLY SIMILAR AREAS; TO ELIMINATE THE REQUIREMENT OF DEMONSTRATING INVESTMENT-BACKED EXPECTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 89-35 was adopted by the Board of County Commissioners in December, 1989; and

WHEREAS, certain procedural aspects of the Ordinance have proven to be burdensome; and

WHEREAS, the requirement of demonstrating reasonable investment backed expectations in Water Control Districts is extremely burdensome to applicant as no clear standards exist and as this requirement overlaps other criteria as set forth; and

WHEREAS, it is not the intent to lower the standards that must be met, but to create more reasonable criteria; and

WHEREAS, certain technical errors need to be corrected; and

WHEREAS, the process as established is often very time consuming; and

WHEREAS, the time frames for accomplishing various tasks are inconsistent and need clarification; and

WHEREAS, certain enforcement provisions have been determined to be necessary; and

WHEREAS, it is not the intent to lengthen the process, but to set realistic time frames and to streamline and expedite the process whenever possible.

1 NOW THEREFORE, BE IT ORDAINED by the Board of County
2 Commissioners of Palm Beach County, as follows:

3 **Section V - Definitions** of Ordinance 89-35; Palm Beach County
4 Concurrency Exemption Ordinance is hereby amended by deleting
5 the following:

6 Definitions:

7 ~~Unilateral Stipulation — a document executed by the Planning~~
8 ~~Director submitted to the Hearing Officer pursuant to Section~~
9 ~~VII.~~

10 **Section VII - Procedure** of Ordinance 89-35; Palm Beach County
11 Concurrency Exemption Ordinance is hereby amended as follows:

12 Procedure:

13 A. Submit to Planning. Applications for a Concurrency
14 Exemption Determination shall be submitted to the Planning
15 Division of the Planning, Zoning and Building Department of
16 Palm Beach County.

17 B. Contents of Application.

18 (1) Form. The Application shall be made on a form
19 established by the Department of Planning, Zoning and Building
20 and available at the Planning Division.

21 (2) Information. The Application shall contain such
22 information as the form requires and as reasonably necessary to
23 provide complete information for a determination under this
24 Ordinance, as determined by the Planning Director, including
25 any information adverse to the applicant. Nothing herein in
26 the form or the requirements of the Planning Director shall be
27 construed as a limitation on the authority of the Hearing
28 Officer to require additional relevant information. The
29 information upon which the claim for a Concurrency Exemption
30 Determination is based shall be presented in a coherent,
31 cohesive, organized manner. It shall include all Development
32 Orders, contracts, letters, appraisals, reports, or other
33 documents, items, or grounds upon which the claim is based. It
34 shall set forth the Section or Sections of this Ordinance under
35 which the Application is made.

1 (3) Sworn Statement. The Application shall contain a
2 Sworn Statement- attesting to the truth and accuracy of the
3 information contained therein.~~with tThe information upon which~~
4 ~~the claim for a Concurency Exemption Determination is based~~
5 ~~presented in a coherent, cohesive, organized manner. It shall~~
6 ~~include all Development Orders, contracts, letters, appraisals,~~
7 ~~reports, or other documents, items, or things upon which the~~
8 ~~claim is based. It shall set forth the Section or Sections of~~
9 ~~this Ordinance under which the Application is made.~~

10 (4) Waiver. The requirements of this paragraph B.;
11 Contents of Application; shall may be waived by the Planning
12 Director in whole or in part where the information in the files
13 of the County demonstrate that a Lot, Parcel or area clearly
14 qualifies for a Concurency Exemption Determination unless
15 other information known to the County indicates otherwise.

16 C. Good Faith Application. By making an Application
17 hereunder, the Applicant and agent each certify that the
18 application is made in good faith and not for the purpose of
19 delay; and that the Applicant or agent have exercised due
20 diligence in ensuring the completeness, accuracy, and veracity
21 of the information. If any information in the application is
22 found to be willfully or knowingly false, any action taken on
23 that application may be automatically revoked.

24 D. Remedy. Failure to comply with the obligations set
25 forth in paragraphs B (3); Sworn Statement; or C; Good Faith
26 Application; may, additionally, result in the County pursuing
27 any remedy or penalty provided by law.

28 E. Times. (1) The Planning Division shall screen the
29 application to determine whether it is technically complete.
30 Upon accepting a technically complete application, the Planning
31 Director shall review the Application to determine its
32 substantive completeness, accuracy, and sufficiency. Within
33 ten (10) working days of acceptance of a technically complete
34 application, the Planning Director shall send a letter to the
35 Applicant verifying the completeness, accuracy, and sufficiency

1 of the information, or whether additional information is
2 needed. If the Planning Director does not require additional
3 information and no stipulation is to be issued, the Planning
4 Director ~~forthwith~~ shall schedule the Application for
5 consideration by the Hearing Officer at the next available
6 date. If additional or revised information is required by the
7 Planning Director, the applicant shall have ~~sixty (60)~~ thirty
8 (30) working days from the date the letter is sent to submit
9 additional or revised information. Upon receipt of such
10 additional information, the Planning Director shall have ten
11 (10) working days to determine whether it is complete,
12 accurate, and sufficient. If not sufficient, the Applicant
13 shall have ~~thirty (30)~~ fifteen (15) working days to submit the
14 required information, and the Planning Director ten (10)
15 working days to review. If the information is then not
16 sufficient, a last additional ~~twenty (20)~~ ten (10) working days
17 to submit such shall be granted. Upon receipt of complete,
18 accurate, and sufficient information, if a stipulation is not
19 to be issued, the Planning Director shall schedule the
20 Application ~~forthwith~~ for consideration by the Hearing Officer,
21 at the next available date. The Hearing Officer shall consider
22 the Applications ~~within fifty (50) days of the date of~~
23 ~~scheduling.~~ upon the date scheduled, or sooner if time frames
24 are waived as set forth in Section VII E(2).

25 (2) The Planning Director shall develop a Preliminary
26 Recommendation ~~or proposed Stipulation~~ within no later fifteen
27 ~~(15) than thirty-five (35) working days of scheduling the~~
28 Application prior to the date set for consideration of the
29 Application by the Hearing Officer. This Preliminary
30 Recommendation ~~or proposed Stipulation~~ shall be sent to the
31 Applicant. It shall set forth the reasons for the Preliminary
32 Recommendation ~~or proposed Stipulation~~. The Applicant shall
33 have fifteen (15) working days from the date the Preliminary
34 Recommendation ~~or proposed Stipulation~~ is sent to respond. If
35 ~~no Stipulation is entered~~ The response shall include a list of

1 the names, addresses, and phone numbers of all witnesses that
2 the Applicant ~~shall~~ intends to present to the Hearing Officer
3 and a complete and accurate summary of all arguments that the
4 applicant or witness will make. Not fewer than five (5)
5 working days prior to the date of the hearing, the Planning
6 Division shall send a summary of all arguments that the
7 Planning Division ~~will~~ intends to make to the Hearing Officer
8 and a list of the names, addresses, phone numbers and summary
9 of testimony of all witnesses that the Planning Division ~~shall~~
10 intends to present, if different than the Applicant's. All
11 documents shall be sent by certified mail, postage pre-paid,
12 return receipt requested. The times set forth in this
13 Paragraph E shall not be jurisdictional and may be waived or
14 extended by the mutual written consent of the parties, or by
15 the Hearing Officer for good cause shown upon application of a
16 party. Working days shall not include Saturdays, Sundays, or
17 legal holidays recognized by the County.

18 (3) Nothing set forth herein shall preclude the
19 Planning Director or Applicant from using less than the number
20 of days allotted for any task and, therefore, to accelerate the
21 process whenever possible.

22 (4)(3) If at any time more than fifty (50) non-
23 Planning Director initiated Applications are pending, an
24 additional ten (10) ~~calendar~~ working days shall be added to
25 each time within which the Planning Director must accomplish
26 something.

27 F. Hearing. Stipulations.

28 (1) Notwithstanding any other provision to the
29 contrary, the Planning Director may initiate an Application for
30 a Concurrency Exemption Determination where all required the
31 information is in the County records, ~~indicates that the~~
32 ~~project clearly,~~ Where that information ~~convincingly,~~
33 substantially and unequivocally unambiguously meets all the
34 applicable criteria of this Ordinance for a Concurrency
35 Exemption Determination. ~~In such a case,~~ the Planning

1 Director shall provide a ~~Unilateral~~ Stipulation along with a
2 summary of the material facts to the Hearing Officer. The
3 ~~Unilateral~~ Stipulation shall provide the subsequent Development
4 Orders to which it applies and shall reference the time frame
5 within which they must be issued to avoid the lapsing of the
6 Concurrency Exemption Determination. (See Section X C;
7 Duration). The Concurrency Exemption Determination shall set
8 forth such other conditions as are reasonably necessary to meet
9 the intent and purpose of this Ordinance.

10 (2) Notwithstanding any other provision to the
11 contrary, in this Ordinance, the Planning Director may present
12 a stipulation to the Hearing Officer, when information in the
13 County records or information presented by an Applicant
14 substantially and unambiguously demonstrates to the Director that
15 the requirements or intent of this Ordinance have been met and
16 that a Concurrency Exemption should be granted.

17 (3) Stipulation. If the Planning Director and
18 Applicant have, or the Planning Director has, stipulated to a
19 Concurrency Exemption Determination, the Hearing Officer shall
20 issue a Concurrency Exemption Determination. Once a
21 Stipulation is properly executed, the Development Orders may be
22 issued notwithstanding that the Hearing Officer has not
23 ratified the Stipulation.

24 (a) The Stipulation and Concurrency Exemption
25 Determination shall be sent by ~~United States~~ Certified Mail,
26 ~~First-Class~~, postage prepaid, return receipt requested, to the
27 Owners in the Project together with a statement informing the
28 Owner that he may apply for a revision to the Concurrency
29 Exemption Determination.

30 (b) Any Owner in a Project for which a Stipulation or
31 Concurrency Exemption Determination has been made based upon a
32 Stipulation may apply for a modification to such. An
33 application for modification shall meet the requirements of
34 this Ordinance.

1 G. Hearings.

2 (1) ~~(2)~~ The Hearing Officer shall have the power to
3 compel the production of evidence, compel compliance with
4 requests for discovery, and compel the attendance of witnesses.
5 These powers of the Hearing Officer may be enforced through a
6 court of competent jurisdiction.

7 (2) ~~(3)~~ Oath. The Hearing Officer shall have the power
8 to administer oaths. All testimony shall be under oath.

9 (3) ~~(4)~~ Consideration. The Hearing Officer shall
10 consider all relevant evidence, the Recommendation and argument
11 of the Planning Director, and argument of the Applicant.

12 (4) ~~(5)~~ Burden of Proof. The Applicant shall have the
13 burden of ~~coming~~ going forward with the evidence and the burden
14 of proof. The decision of the Hearing Officer shall be based
15 on the greater weight of the competent substantial evidence as
16 found by the Hearing Officer and after applying the criteria of
17 this Ordinance.

18 (5) ~~(6)~~ Formality. Formal rules of evidence shall not
19 apply. Hearsay evidence may be admitted, but shall not form
20 the sole basis upon which the Hearing Officer's decision is
21 made. The hearing shall be conducted in a manner to ensure
22 that procedural and substantive due process is afforded the
23 Applicant.

24 (6) ~~(7)~~ Order. The Hearing Officer shall approve or
25 deny in whole or in part the Application for a Concurrency
26 Exemption Determination, or may postpone the matter for
27 submission of additional ~~information~~ evidence. A decision
28 shall be made by the Hearing Officer within ~~forty-five (45)~~
29 fifteen (15) calendar working days of the date complete
30 ~~information evidence, as determined by the Hearing Officer,~~
31 including the recommended order, is submitted to the Hearing
32 Officer. An Applicant may elect by written notice to have the
33 decision based on the ~~information evidence~~ he submitted at the
34 hearing, in which case the decision shall be made within
35 ~~thirty-five (35) calendar~~ fifteen (15) working days of such

1 election ~~during which time~~ or the submission by the Planning
2 Director of additional information for review by the Hearing
3 Officer, ~~in subsequent a subsequent hearing,~~ whichever shall
4 occur last. ~~If requested by either party,~~ an additional hearing
5 may be scheduled. The decision of the Hearing officer shall be
6 reduced to writing and shall contain findings of fact and
7 conclusion of law, and shall provide the legal description of
8 the property to which it applies. It may contain reasonable
9 conditions necessary to effect the purposes of this Ordinance
10 and the Concurrency Requirements of the Plan. These conditions
11 shall run with the land and be binding on the applicant, his
12 successors and heirs and any affected third party. ~~If~~ The
13 Order shall state that it is subject to expiration in
14 accordance with this or subsequent ordinance(s) (See Section X
15 C; Duration). It shall be filed with the Planning Director and
16 a copy provided to the Applicant.

17 G. H. Appeals/Exhaustion.

18 (1) Appeals shall be by petition for writ of
19 certiorari to the Fifteenth Judicial Circuit Court in and for
20 Palm Beach County. The petition shall be filed within thirty
21 (30) days of the Rendition of the order. This time is
22 jurisdictional. Only parties to the hearing may file an
23 appeal.

24 (2) Any claim for Vested rights as to the Concurrency
25 Requirements of the Plan, for a Concurrency Exemption
26 Determination, or a taking claim resulting from the Concurrency
27 Requirements of the Plan (where the issues involve a Valid
28 Local Government Development Order issued prior to the
29 Effective Date of this Ordinance) shall not be made until the
30 procedures under this Ordinance are exhausted or the County
31 Attorney makes a written determination that this Ordinance does
32 not apply.

33 H.

34 **Section VIII D of Ordinance 89-35; Palm Beach County**
35 **Concurrency Exemption Ordinance is hereby amended as follows:**

1 Categories of Concurrency Exemption Determinations:

2 D. Owner exempt from concurrency. An Owner as to a
3 ~~particular~~ single family residential parcel or lot who ~~took~~
4 ~~substantial actions,~~ in good faith, ~~reliance~~ relied on the
5 regulations and laws applicable, or an act or omission of the
6 County, with a then-existing reasonable ~~investment-backed~~
7 expectation of the ability to develop the parcel or lot. (See
8 Sections IX B and XIII).

9 **Section IX Criteria** of Ordinance 89-35; Palm Beach County
10 Concurrency Exemption Ordinance is hereby amended as follows:

11 Criteria:

12 (3) In determining whether the approval remains Valid,
13 the County land development regulations shall ~~control~~ be
14 considered along with evidence that the approval has not lapsed
15 or the project has not been abandoned by passage of time or
16 otherwise.

17 **Section XI Revocation of Concurrency Exemption Determination of**
18 Ordinance 89-35; Palm Beach County Concurrency Exemption
19 Ordinance is hereby amended as follows:

20 Revocation of Concurrency Exemption Determination:

21 A. A Concurrency Exemption Determination may be
22 reconsidered by the Hearing Officer notwithstanding any
23 provision in this Code when the Hearing Officer determines,
24 upon the application of any party to the hearing that the
25 Concurrency Exemption Determination was based on materially
26 inaccurate or incomplete information and that correct and
27 complete information was reasonably obtainable by the
28 Applicant. No application for reconsideration shall be
29 considered unless such is filed within fifteen (15) days of
30 Rendition of the order.

31 B. If a Concurrency Exemption is revoked pursuant to
32 Section VII C, the Applicant may request a expedited hearing
33 before the Hearing Officer for the purpose of demonstrating the
34 truthfulness and accuracy of the information provided.
35

1 Section XIII Special Criteria for Water Control Districts of
2 Ordinance No. 89-35; Palm Beach County Concurrency Exemption
3 Ordinance is hereby amended as follows:

4 Special Criteria for Water Control District:

5 B. Water Control District. Expenditures. For purposes
6 of applying the criteria in this Section XIII, Water Control
7 Districts providing the vast majority of improvements in taxing
8 units for the construction of buildings on individual lots may
9 be considered as though it were a Developer, and the amount of
10 assessments made, and expanded only for, existing actual
11 improvements and the design, engineering studies, and permits
12 for such shall be considered ~~expenditures for purposes of~~
13 ~~determining investment-backed expectations and reliance by~~
14 ~~individual lot owners and whether such were substantial and~~
15 ~~reasonable.~~ for determining whether a reasonable person would
16 have an expectation that an individual lot could be developed.

17 F. Notwithstanding the special criteria set forth in
18 Section XIII, a Concurrency Exemption Determination shall be
19 issued if a Concurrency Exemption Determination has been issued
20 for a lot(s) which is part of the project or geographic area
21 with the same level of Development as the lot(s) under
22 consideration and the lot(s) under consideration has
23 substantially the same material facts as the lot(s) which
24 received the Concurrency Exemption Determination.

25 EFFECTIVE DATE:

26 The provisions of this Ordinance shall become effective
27 upon receipt of the acknowledgement by the Secretary of State.
28 Sections VII F and XIII may be utilized in an application for
29 a Concurrency Exemption Determination pending on the effective
30 date of this ordinance, but for which a determination has not
31 been issued on the effective date of this ordinance.

32 APPROVED AND ADOPTED by the Board of County
33 Commissioners of Palm Beach County, Florida, on the 24th day
34 of July, 1990.
35

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS

By [Signature]
Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

JOHN B. DUNKLE, CLERK
Board of County Commissioners

By [Signature]
County Attorney

By [Signature]
DEPUTY CLERK

Acknowledgment by the Department of State of State of
Florida, on the 6th day of August, 1990.

EFFECTIVE DATE: Acknowledgement from the Department of
State received on the 10th day of August, 1990, at
8:09 A.M., and filed in the Office of the Clerk of the
Board of County Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners, certify this to
be a true and correct copy of the original filed in
my office on 7/24/90
DATED at West Palm Beach, FL on 8/14/90
JOHN B. DUNKLE, Clerk
By: [Signature] Deputy Clerk